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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 8th February, 2016

+ **MAC.APP. 588/2010**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. D.K. Sharma, Adv.

versus

NOOR SUBANA & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company felt aggrieved with the findings and directions in the judgment dated 15.07.2010 passed by the motor accident claims tribunal (the tribunal) in claim Case No. 391/2008 and, thus, preferred the appeal at hand under Section 173 of Motor Vehicles Act, 1988 (MV Act), raising issues about the calculation of the compensation awarded in favour of the first and second respondents and denial of the recovery rights against third to sixth respondents herein.

2. The learned counsel appearing for the insurance company (the appellant), however, submitted at the outset that the insurance company does not press the appeal insofar as the calculation of compensation in favour of the first and second respondents herein is concerned. Instead, it presses the appeal only to the extent it claimed recovery rights on the

ground that the driver of the offending vehicle was not holding a valid driving license and, thus, there was a breach in the terms and conditions of the insurance policy. The respondents No.3 to 6, inspite of notice, have opted to suffer these proceedings ex-parte. It is noted that in (para 16) the impugned judgment, the tribunal rejected the plea of insurance company for recovery rights on the ground it had examined only Mr. M.S. Panwar (R1W1) and had not taken any steps for examining the investigator or an official from transport authority to prove its contentions.

3. The learned counsel for the insurance company, however, pointed out that on 31.3.2010, the tribunal had concluded recording the evidence of the claimant and had posted the matter for respondents' evidence to 17.5.2010. On 17.5.2010, the summons issued to the witness at the instance of the insurance company had not returned. Nonetheless no effective proceedings could take place as the presiding officer of the tribunal was on leave and the reader, in his absence, listed the matter for 09.07.2010. On 09.07.2010, the insurance company examined R1W1 and sought one more opportunity. This was rejected on the ground "the case of the petitioner will be unnecessary delayed". Thus, the proceedings were concluded, final arguments having been heard on the same date, judgment was pronounced on 15.07.2010.

4. This Court agrees with the submission that the opportunity for evidence was unduly scuttled by the tribunal.

5. The learned counsel for the appellant submits that the award has been duly satisfied in favour of the claimants (first and second respondents herein) by appropriate deposit in this Court and that the

insurance company would have no objection if the entire said deposit be released in favour of the claimants.

6. In above facts and circumstances, the issue arising out of the claim of the insurance company against the respondents Nos. 3 to 6 herein is remanded to the tribunal for further inquiry and adjudication. The tribunal shall give effective opportunity to the insurance company to prove its contentions in above regard and should the opposite parties be participating an opportunity to them as well for evidence in rebuttal.

7. The parties (the appellant herein and respondents Nos. 3 to 6 herein) are directed to appear before the tribunal for further proceedings, in accordance with law on 01.04.2016.

8. Some portion of the deposit made by the insurance company was earlier released in favour of the claimants. The balance shall also be released to them in terms of the impugned judgment of the tribunal.

9. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

FEBRUARY 08, 2016
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